



**Iowa Department of Revenue**

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September 2, 2016

Iowa Utilities Board  
1375 E Court Ave  
Des Moines, IA 50319

RE: Docket No. RMU-016, Review of Cogeneration and Small Power Production Rules [199 IAC Chapter 15]

Dear Members of the Board:

Thank you for sharing this rule with the Department of Revenue (hereinafter "IDR").

The following comments are based on the review of members of our legal staff:

1. In subrule 15.19(1)(b), IDR's legal staff questions whether it is a good idea to remove the list of the types of entities that can qualify. While this information is in the statute, it also seems appropriate to include in this subrule on the application requirements. And, IUB is keeping some other information from the statute in the rules so it seems like it would be consistent to leave this information in as well. Otherwise, it seems like there should at least be a cross-reference in the rules to the list of entities in Iowa Code section 476C.1.
2. In subrule 15.19(3), IUB explains the ownership limitations. In (b)(3) of that subrule, IUB explains that it will look through the entity that owns the facility to see if the owners of the owner of the entity meet the ownership limitations. IDR's legal staff agrees that it makes sense for IUB to look at this information. However, IUB has previously indicated to IDR that IUB will not make eligibility decisions based on this information but rather it will identify the information for IDR and IDR will make the decision. It is unclear in the statute which agency has jurisdiction over this issue. However, IDR's legal staff believes the current draft of the rules gives the impression that IUB will make eligibility decisions based on ownership and believes that, if IUB plans to leave those decisions to IDR the rules need further clarification to indicate that IDR will make these decisions.
3. Subrules 15.20(1) and 15.21(1) contain the following proposed language on confidentiality:

The board's website contains the tax credit application filing instructions and the link through which the filings are made. Upon filing, the tax credit applications will be held confidential by the board and the Iowa department of revenue as documents containing customer-specific or

personal information and information related to tax returns. The information will be subject to the provisions of 199 IAC 1.9(8)(b)(3).

It is unclear what “customer-specific” or “personal information” refers to and whether or not that information is in fact confidential. In addition, IDR’s legal staff would prefer that the rule not refer to IDR. Any rule on what IDR will keep confidential seems more appropriate for the IDR rules; or, a rule on what IDR will keep confidential may not be necessary at all. IDR’s confidentiality requirements under this program are governed by the Open Records Act and IDR’s general statutes on confidentiality because there are no confidentiality provisions specific to the Renewable Energy Tax Credit statute. IDR proposes striking the reference to IDR from the rule. We also think it may be a good idea for IDR legal staff and IUB legal staff to meet to discuss whether the application is in fact information related to tax returns in the hands of IUB. If it is not in fact tax return information, the application may be public in the hands of IUB, unless it contains information that is considered confidential for other reasons.

4. The amendments in subrule 15.21(2) propose cutting the cross-references to IDR’s rules on this credit. IDR’s legal staff thinks that maintaining the cross-references is more user-friendly. Concerns about updating should not be an issue because the rule numbers are almost never changed. With that said, the current reference to the IDR rule for individual income tax is wrong; it should be 42.28, not 42.26.
5. Subparagraph 15.21(1)“b”(3) says IUB will notify IDR as to whether the reported amount of eligible energy “seems” accurate rather than that it “*is*” accurate. While this language has been in the rule for some time, IDR’s legal staff believes it should say “is” rather than “seems” or “appears to be accurate based on the information provided”. This seems appropriate because the statute requires the tax credit application (to the board) to include “Sufficient documentation that the electricity, heat for a commercial purpose, methane gas or other biogas, or hydrogen fuel has been generated by the eligible renewable energy facility and sold to the purchaser of renewable energy.” Iowa Code section 476C.4(1)“d”.

In addition, Amy Harris, Division Administrator for Research and Analysis and Chief Economist, noticed one minor error on page 5 regarding the reference to CACTAS – the acronym stands for “Tax Credit Award, Claim & Transfer Administration System”. (Emphasis added). The “&” has been mistakenly replaced with “of” on page 5 of the document.

IDR’s legal staff is happy to discuss any or all of these issues.

Respectfully submitted,

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